ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 97-11
Implementation of Section 402(b)(2)(A)	)	
of the Telecommunications Act of 1996	)	

JOINT REPLY COMMENTS OF BELL ATLANTIC[1] AND NYNEX[2]

Commenters not only praised the Commission for proposing to eliminate the unnecessary and burdensome section 214 application process for price cap companies, but suggested that the Commission go further and eliminate the section 214 application requirement for all carriers. In contrast, only one party, MCI, claims that the Commission should continue to apply 214 construction permit requirements on price cap carriers. It bases its claims, however, on several misguided arguments that have little or nothing to do with section 214 rules and that are wrong to boot. As a result, the Commission should promptly adopt its proposal to lift the section 214 construction permit requirement from all carriers regulated under price caps. In addition, the Commission should move forward with its proposal to streamline service discontinuation procedures for all carriers.

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1 The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

2 The NYNEX Telephone Companies ("NYNEX") are New York Telephone Company and New England Telephone and Telegraph Company.

I. The Commission Should No Longer Require Section 214 Construction Permits.

MCI argues that despite the provisions of the Act that eliminate section 214 review for extension of lines and require the Commission to forbear from unnecessary regulation, the Commission should nonetheless retain the section 214 permit requirement for extensions of lines within the service territory of a carrier regulated as dominant. According to MCI, although regulatory changes and the onset of competition "allow the Commission to drop its concern about duplicative investments," the 214 review is still necessary because "there remain numerous anticompetitive investment opportunities" an incumbent can make.[3] MCI's attempts to justify retaining the requirement are either irrelevant or simply wrong.

For example, MCI repeats rejected arguments that local exchange carriers ("LECs") have over-invested in digital switching.[4] By MCI's logic, section 214 permits should be retained to limit such LEC activity. But, it is clear that even if there were a problem, which there is not, section 214 permit requirements would have no impact. It has been recognized that construction of local switching equipment is not covered by the existing 214 requirement.[5] Indeed ***any*** upgrade of local facilities does not require a section 214 construction permit unless it creates a new line of interstate communication.[6] Moreover, MCI is wrong in criticizing the deployment of digital switches. The Commission has recognized that digital switching is a beneficial service

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3 MCI Comments at 5.

4 ***See*** MCI Comments at 3.

5 ***See Kitchen v. FCC***, 464 F.2d 801, 803 (D.C. Cir. 1972) (denying claim that construction of switching facilities and building require prior approval under section 214).

6 ***See Application of New Jersey Bell Telephone Company***, 9 FCC Rcd 3677, 3688 (New Jersey Bell was not required "to obtain authorization before its network upgrades begin").

improvement,[7] and even MCI itself has argued in other proceedings that LECs should be encouraged to install digital switches because they "enhance the ability of carriers to provide more advanced and reliable service."[8]

MCI also cites the Commission's experience of applying 214 permit requirements to video dialtone service.[9] As Congress recognized in specifically eliminating all 214 requirements for video services provided by common carriers,[10] the section 214 application process served only to delay and impede competition in video services.[11] That appears to be MCI's objective here as well. In fact, MCI goes so far as to claim that the Commission should require dominant carriers to provide even more information about the types of services they will provide and the prices they will charge.[12] The sole purpose that would be served by doing so would be to give competitors such as MCI a leg up in the market, and thereby undermine the benefits that true competition would provide consumers.

MCI also argues against forbearing from requiring 214 construction permits for price cap carriers on the theory that the ***potential*** that some carriers might be subject to sharing is sufficient

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7 ***Petitions for Waivers Filed By Accipiter Communications, Inc. and U.S. West Communications, Inc.***, DA 96-1883, Memorandum Opinion and Order at ¶¶ 9, 11 (Com. Car. Bur., rel. Nov. 14, 1996).

8 **Federal-State Joint Board on Universal Service**, CC Docket No. 96-45, Recommended Decision at ¶ 148 (rel. Nov. 8, 1996).

9 MCI Comments at 4.

10 47 U.S.C. § 571(c).

11 "This requirement [section 214] has served as an obstacle to competitive entry and disproportionately disadvantaged new competitors. Eliminating this barrier to entry will hasten the development of video competition and will provide consumers with increased program choice." H. Rep. No. 458, 104th Cong., 2d Sess. at 173 (1996).

12 MCI Comments at 15.

to retain the requirement.[13] But, as the Commission recognized, it makes no sense for a carrier to make an uneconomic investment on the ***expectation*** that ***some*** of the extra cost ***could*** be offset through a reduction in future ***potential*** sharing obligations. It is far too attenuated to suggest that there is a problem, much less that retaining a section 214 requirement is necessary to remedy the imagined problem. MCI, which has opposed the elimination of sharing from price cap regulation, would parlay the existence of a sharing requirement into a justification to continue unnecessary and burdensome 214 requirements. This effort to use the regulatory process to gain a competitive advantage is exactly what the forbearance provision of the Act was intended to remedy.

II. The Commission Should Streamline Section 214 Service Discontinuance Procedures for Dominant Carriers.

MCI also opposes the Commission's proposal to extend streamlined service discontinuance procedures to dominant carriers. The Commission correctly concluded that streamlined exit procedures will encourage incumbent carriers to offer new services and enter new territories.[14] In opposing the extension of streamlined procedures to carriers classified as dominant, MCI argues that these carriers should not be allowed such streamlined treatment in their existing service territory.[15] MCI ignores the Commission's recognition that dominant carriers may offer additional competition by introducing new services within their existing

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13 ***See*** MCI Comments at 11. MCI also argues that forbearance should be rejected to discourage discrimination, (***id.***) but the section 214 requirement adds nothing to the Commission's already formidable palette of safeguards to prevent unreasonable discrimination.

14 Notice, ¶ 70.

15 MCI Comments at 15.

territory. Moreover, MCI offers no argument why the streamlined procedures, which include written notice and opportunity for comment, are inadequate.

AT&T states that it does not object to application of the streamlined discontinuance procedures to carriers classified as dominant, but then argues that those streamlined procedures should be made more onerous for dominant carriers.[16] In particular, AT&T would change the language of the required notice to exclude the statement that, absent a showing that "customers would be unable to receive service or a reasonable substitute from another carrier," the Commission would normally authorize the service withdrawal.[17] Far from being an unfair presumption, as suggested by AT&T, this language merely sets forth the standard that the Commission would apply to any carrier's request to discontinue service. Indeed, absent a showing that a reasonable substitute is unavailable, it is difficult to see ***any*** circumstance where the Commission would reject a request to discontinue a service.

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16 AT&T Comments at 3.

17 47 C.F.R. § 63.71.

Conclusion

For the reasons set forth in Bell Atlantic's and NYNEX's initial and reply comments, the Commission should eliminate the section 214 requirement for price cap regulated carriers and make other proposed changes to streamline remaining domestic obligations under section 214.

Respectfully submitted,

Edward D. Young, III
Michael E. Glover
Of Counsel

Edward Shakin

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic Telephone Companies

William D. Smith

1095 Avenue of the Americas
Room 3725
New York, NY 10036
(212) 395-6495

Attorney for the
NYNEX Telephone Companies

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 1997 a copy of the foregoing "Joint Reply Comments of Bell Atlantic and NYNEX" was served by hand on the parties on the attached list.

Tracey M. DeVaux

Tracey ~~M~~. DeVaux

Secretary*
Network Service Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, NW
Room 235
Washington, DC 20554
(Hard copy and diskette version)

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554